

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TODD KREISLER,

Plaintiff,

**Civil Action No. 12 Civ. 4921 (ALC)(MHD)
ECF CASE**

vs.

MONA'S PIZZA, INC., d/b/a
ROSA'S PIZZA

ATTORNEY'S AFFIDAVIT

Defendants.

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Plaintiff, TODD KREISLER, by and through his undersigned counsel, hereby files this Attorney's Affidavit in support of his Motion for Default Judgment seeking an Entry of Default Final Judgment against defendant, MONA'S PIZZA, INC. d/b/a ROSA'S PIZZA, and as grounds therefore states as follows:

1. The Plaintiff filed a Complaint on June 22, 2012, for the defendant's lack of compliance with Title III of the Americans with Disabilities Act, the Administrative Code of the City of New York § 8-107 et. seq., (hereinafter referred to as the "New York City Human Rights Law"), and the New York State Executive Law § 296 et. seq., (hereinafter referred to as the "New York State Human Rights Law"). A copy of the Summons and Complaint are attached hereto as Exhibit "A".

2. The Summons and Complaint, and Amended Summons and Amended Complaint, were served on defendant MONA'S PIZZA, INC., a New York corporation, d/b/a ROSA'S PIZZA, on July 3, 2012 upon the New York State Secretary of State. Proof of such service was filed on July 20, 2012. Please see attached "Exhibit "B".

3. On September 27, 2012, the Clerk of the Court entered a Certificate of Default against defendant ROSA'S PIZZA, d/b/a MONA'S PIZZA for its failure to file its answer or otherwise move with respect to the Complaint within the time limits prescribed by the Federal Rules of Civil Procedure. Please see attached "Exhibit "C". A default judgment is therefore appropriate and is applicable to ROSA'S PIZZA, d/b/a MONA'S PIZZA.

4. The Complaint seeks, *inter alia*, an Order requiring the defendant to make all necessary modifications to the restaurant to eliminate all barriers that prevent full and equal access by individuals with mobility impairments to the full extent required by Title III of the Americans with Disabilities Act. The Complaint also seeks compensatory damages in the amount of one-thousand dollars (\$1000.00) based on the defendant's violation of the New York City Human Rights Law and New York State Human Rights Law.

5. The pleading to which no response has been made by defendant ROSA'S PIZZA, was properly served. Defendant, ROSA'S PIZZA, INC. is not an infant, mentally incompetent or in the military service of the United States.

6. To date, defendant, ROSA'S PIZZA, d/b/a MONA'S PIZZA, has not filed its answer or otherwise moved with respect to the Complaint, nor has it appeared in this action

7. The defendant has violated the Americans with Disabilities Act, the New York City Human Rights Law and the New York State Human Rights Law, and accordingly, the Plaintiff respectfully requests that the Final Default Judgment require defendant, ROSA'S PIZZA, INC. d/b/a MONA'S PIZZA, to remove architectural barriers in accordance with the ADA, 28 C.F.R. § 36.302 et. seq., and the 2010 ADA Standards for Accessible Design as follows:

i. Provide an accessible entrance/exit from the restroom by widening the doorway to 36 inches to allow required access and an accessible route into and out of the restroom within ROSA'S PIZZA, INC. d/b/a MONA'S PIZZA.

ii. Completely and properly insulate exposed drain pipes under lavatory.

8. The Plaintiff respectfully requests that the Plaintiff be awarded one-thousand dollars (\$1000.00) in compensatory damages based on the Defendant's violation of the New York City Human Rights Law and the New York State Human Rights Law; this Honorable Court order Defendant to comply with the terms of the Final Judgment within ninety (90) days of the entry of the judgment; and this Honorable Court retain jurisdiction relating to the Plaintiff's attorney's fees, and said motion shall be filed within thirty (30) days of entry of this Final Judgment. An inquest is not required under Fed. R. Civ. P. 55(b) (2), and in this case an inquest into damages is unnecessary, especially in light of the plaintiff's attached affidavit attached hereto as Exhibit "D".

MEMORANDUM OF LAW

9. The Plaintiff is seeking one-thousand dollars (\$1,000.00) in compensatory damages based on 1) the defendant's violation of the Administrative Code of the City of New York § 8-107 et. seq., (the "New York City Human Rights Law"), and the New York State Executive Law § 296 et. seq., (the "New York State Human Rights Law"); and/or 2) garden variety mental anguish and emotional distress suffered by him as a result of being denied access to the restroom within the restaurant known as Mona's Pizza. (*see* Exhibit "D").

10. Based upon the foregoing, the Plaintiff respectfully requests that his Motion for Default Judgment be granted. A proposed default judgment is attached hereto as (Exhibit "E").

WHEREFORE, based on the foregoing and pursuant to the Clerk's Default dated September 27, 2012, the Plaintiff respectfully requests that this Honorable Court issue a Final Judgment against the defendant, ROSA'S PIZZA, d/b/a MONA'S PIZZA, in accordance with the relief sought in Plaintiff's Complaint, as well as any further relief this Court deems just and proper.

Dated: New York, New York
October 10, 2012

Respectfully submitted,

/s/ Adam T. Shore

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I DO SWEAR THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

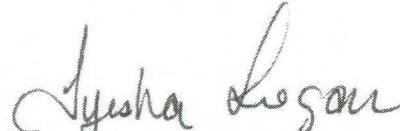


AFFIANT

STATE OF NEW YORK
COUNTY OF NEW YORK

BEFORE ME, the undersigned authority, personally appeared ADAM SHORE, who swears and deposes that the Attorney Affidavit is true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me this 10th day of October 2012.



STATE OF NEW YORK,

NOTARY PUBLIC

PRINT NAME:

Personally known by me, or

Produced Identification: *Rebated*

Type of Identification: Ny DL -

My Commission Expires: 04-16-2016

TYESHA LOGAN
Notary Public, State of New York
Qualified In King County
No. 01LO6259853
My Commission Expires 04-16-2016